

FEDERAL DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS

ENDRI SINANI, an individual,

Plaintiff,

v.

RICHARD DAVID, an individual.

Defendant.

NO.

COMPLAINT

COMES NOW Plaintiff ENDRI SINANI by and through counsel and alleges
the following against Defendant RICHARD DAVID:

I. INTRODUCTION

1. This is a lawsuit for immigration financial support under the Form I-864, Affidavit of Support. The Form I-864 was created by the United States Congress in 1996 to ensure that family-sponsored immigrants are ensured a basic level of financial support, sufficient to meet the most basic needs of life. In mandating

1 the Form I-864, Congress required visa sponsors, rather than the American
2 people, serve as a safety net to new immigrants.

3 2. Plaintiff is the Beneficiary of a Form I-864 signed by the Defendant.
4 Defendant has failed to provide Plaintiff with the basic level of subsistence
5 support promised in the Form I-864 contract. This lawsuit seeks to compel the
6 Defendant to fulfill his support duty mandated by the Form I-864 contract and
7 federal law.

8 9 II. JURISDICTION

10 3. This Court has subject matter jurisdiction over this lawsuit pursuant to 28
11 U.S.C. § 1331 as this action arises under federal immigration law. 8 U.S.C. §
12 1183a.

13 4. This court has personal jurisdiction over Defendant as, by signing the
14 Form I-864 Defendant submitted to the jurisdiction of any court with subject
15 matter jurisdiction over Plaintiff's claims. 8 U.S.C. § 1183a(a)(1)(C).

16 17 III. VENUE

18 2. Venue in this matter is proper in this United States District because the
19 Defendant resides in this district. 28 U.S.C. § 1391(e)(1)(A).

20 21 IV. PLAINTIFF

22 3. Plaintiff Endri Sinani is a citizen of Albania and lawful permanent
23 resident ("LPR") of the United States of America.

24 4. Plaintiff resides in Houston, Texas.

V. DEFENDANT

5. Defendant Richard David is a citizen of the United States of America.

6. As further alleged below, Defendant served as Plaintiff's immigration sponsor, thereby contractually promising to provide a specified level of income to her.

7. Defendant resides in Houston, Texas.

VI. FACTUAL ALLEGATIONS

Background concerning the Form I-864, Affidavit of Support.

8. United States immigration law has long prohibited immigration by individuals deemed likely to be a drain on public resources.

9. The current immigration statute, in effect at all times material to the facts alleged herein, forbids the entry of immigrants determined likely to become a "public charge." 8 U.S.C. § 1182(a)(4).

10. The Form I-864, Affidavit of Support ("Form I-864") is required for a family-based immigrant visa applicant to overcome public charge inadmissibility. *See* 8 U.S.C. § 1182(a)(4)(C).

11. Creation of the Form I-864 was mandated by Congress to ensure that certain classes of immigrants to the United States would be guaranteed a level of financial support necessary to meet basic human needs. *Cf.* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009; *see, e.g., Love v. Love*, 33 A. 3d 1268, 1276 (Pa. Super. Ct. 2011) ("[i]t is abundantly clear that the purpose of the Affidavit is to prevent an immigrant spouse from becoming a public charge").

12. The immigration agencies published interim regulations implementing the Form I-864 in the summer of 1997, which regulations were finalized in 2006.

1 Affidavits of Support on Behalf of Immigrants, 62 Fed. Reg. 54346 (Oct. 20, 1997)
2 (to be codified at 8 C.F.R. § 213.a1 *et seq.*) (hereinafter Preliminary Rules);
3 Affidavits of Support on Behalf of Immigrants, 71 Fed. Reg. 35732 (June 21,
4 2006).

5 13. The Form I-864 has been mandatory in marriage-based immigrant visa
6 cases at all times material to the case at bar.

7 14. The Form I-864 is a legally binding contract between the sponsor and the
8 United States Government.

9 15. By signing the Form I-864, the sponsor expressly agrees to provide the
10 intending immigrant with any support necessary to maintain her at an income
11 that is at least 125 percent of the Federal Poverty Guidelines for her household
12 size.

13 16. The Federal Poverty Guidelines are published annually in the Federal
14 Register, which published numbers govern the claims asserted herein.

15 17. The Form I-864 support obligation may be enforced by the immigrant
16 beneficiary, who is a third-party beneficiary thereof. *See In re Marriage of Khan*,
17 No. 44814-9-II, 2014 Wash. App. LEXIS 1916, at *4-5 (Div. II, Aug. 5, 2014).

18 18. The Form I-864 specifies that the sponsor's support duty continues until
19 the beneficiary: (1) becomes a U.S. citizen; (2) can be credited with 40 quarters of
20 work; (3) is no longer a permanent resident and has departed the U.S.; (4) after
21 being ordered removed seeks permanent residency based on a different I-864; or
22 (5) dies (collectively "the Terminating Events").

23
24 **Facts concerning Plaintiff's claims.**

25 19. Defendant is a citizen of the United States of America.

26 20. Plaintiff is a citizen of Albania.

1 21. Defendant elected to petition for Plaintiff to immigrate to the United
2 States.

3 22. Because he was the immigration petitioner, U.S. immigration law
4 required, as a precondition to approval of Plaintiff's application, that Defendant
5 execute and file with the U.S. immigration authorities a Form I-864 in support of
6 Plaintiff (the specific document executed by Sponsor is referred to hereinafter as
7 the "Contract").

8 23. Defendant's support duty under the Contract was subject to the condition
9 precedent that Plaintiff gain status as a Lawful Permanent Resident ("LPR")
10 based on the Contract signed by Defendant.

11 24. Plaintiff was granted status as an LPR of the United States on December
12 18, 2014.

13 25. Plaintiff's LPR status was based on the Contract signed by Defendant.

14 26. None of the Terminating Events set forth in the Contract have yet
15 occurred.

16 27. Defendant has failed to provide Plaintiff with financial support as
17 required under the Contract.

18 19 VII. CLAIMS FOR RELIEF

20 Breach of contract.

21 28. Plaintiff re-alleges and incorporates all paragraphs above as though fully
22 stated herein.

23 29. By executing the Contract, Defendant entered into an express written
24 contract with the United States Government.

25 30. Plaintiff is a third-party beneficiary of the Contract.
26

31. Plaintiff has standing as third-party to enforce her rights under the Contract.

32. Under the express terms of the Contract Defendant agreed to provide Plaintiff with any support necessary to maintain her at an income that is at least 125 percent of the Federal Poverty Guidelines for her household size.

33. Defendant's responsibility to provide income support commenced on December 18, 2014 when Plaintiff became a lawful permanent resident of the United States.

34. All conditions precedent to Defendant's duty to perform on the Contract were fulfilled as of December 18, 2014.

35. Defendant has breached the Contract by failing to provide income support to Plaintiff.

36. As a result of Defendant's breach, Plaintiff has suffered damages in an amount to be determined at trial.

VIII. REQUEST FOR RELIEF

Plaintiff requests the following relief from the Court:

A. Entry of judgment against Defendant and in favor of Plaintiff on each and every cause of action asserted herein;

B. An award of actual damages in an amount equivalent to 125% of the Federal Poverty Guideline for Plaintiff's household for the period from December 18, 2014 to the date on which judgment issues;

C. A declaration that Plaintiff is entitled to continued receipt of financial support from Defendant in the amount of 125% the Federal Poverty Guidelines for her household size, less actual income, until the occurrence of one of the Terminating Events.

1 D. An order of specific performance, requiring Defendant to make monthly
2 payments to Plaintiff for the amount set forth in Paragraph C above, until such
3 time as a Terminating Event occurs.

4 E. An award of all Plaintiff's attorney fees;


5 F. An award of all Plaintiff's costs;

6 G. The right to amend this complaint to conform to the evidence presented at
7 trial; and

8 H. Such other and further relief in Plaintiff's favor as the Court may deem
9 just and equitable under the circumstances.

10
11 DATED: May 24, 2017,

12 **Immigration Support Advocates**

13
14 By:  _____

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